

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**CRAIG CUNNINGHAM** on behalf of himself and  
all others similarly situated,

**Case No. 2:19-cv-00638-ILG-PK**

Plaintiff,

-VS.-

**BIG THINK CAPITAL INC.,**

Defendant.

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**DECLARATION OF DAVID BROWN**

Pursuant to 28 U.S.C. § 1746, the undersigned declares as follows:

1. I am the president of Big Think Capital Inc. ("Big Think"). I have access to Big Think's business records pertaining to the records of its customers and potential customers, including records relating to an online application identifying the purported customer as Craig Cunningham ("Mr. Cunningham") or Granite Enterprises, LLC ("Granite"). I have personally reviewed the business records relating Mr. Cunningham and Granite. These records are kept by Big Think in the ordinary course of its business, made at or near the time of the events which they reflect, from information provided or transmitted by a person with knowledge and under a duty to enter accurate information, and are of the type which Big Think regularly maintains. As a result of my review of those records, I have personal knowledge of and am competent to testify as to all matters stated in this declaration.

2. Big Think is a financial services marketplace that specializes in helping businesses find sources of financing.

3. One way in which Big Think identifies potential customers is through its website, <https://bigthinkcapital.com>.

4. A business interested in financing can visit the website, and click a link to “Apply Now.” After answering non-identifying questions, someone interested in that financing can fill out an online application (“Application”). A copy of the Application is attached as Exhibit 1.

5. The Application has fields for name, company, phone number, and email address.

6. The Application also contains the following consent language (“Consent”):

By clicking ‘Get Started or Apply Now’, you (i) consent to receiving calls and messages, including autodialed calls for marketing purposes, from Big Think Capital or its representatives or agents at the telephone number provided above (including mobile telephone number), and acknowledge that no purchase of credit or services is contingent upon such consent; and (ii) acknowledge that you have read Big Think Capital’s Application Agreement and Big Think Capital’s Privacy Policy and understand that you may opt out of receiving communications of your choice from Big Think Capital as provided in the Privacy Policy.

7. On March 20, 2018, an individual submitted the Application, which identified the potential customer as Mr. Cunningham, provided Granite as a company name of Granite, and provided a phone number of 615-348-1977. To submit the Application, the individual would have to have clicked “Apply Now,” an option that appears just below the Consent.

8. Big Think has no record of someone contacting Big Think to revoke consent or otherwise asking that the Phone Number not be contacted.

9. Big Think’s records do not reflect a telephone call to the Phone Number on January 28, 2019.

10. After being served with the Complaint in this action, Big Think began the process of securing counsel.

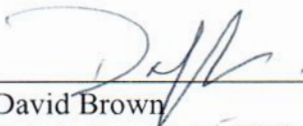
11. On March 6, 2019, Mr. Cunningham’s counsel agreed to allow Big Think until April 5, 2019 to respond to the Complaint. A copy of the March 6, 2019 correspondence is attached as Exhibit 2.

12. Prior to April 5, 2019, Big Think began the process of retaining counsel.

13. After April 19, 2019, I learned that the counsel I had chosen was changing positions and, as a result, would no longer be able to represent Big Think in this case.

14. In early July 2019, Big Think retained its current counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



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David Brown  
Dated: August 15, 2019

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**CRAIG CUNNINGHAM** on behalf of himself and  
all others similarly situated,

Plaintiff,

-vs.-

**BIG THINK CAPITAL INC.,**

Defendant.

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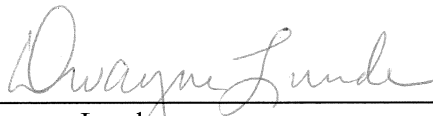
**Case No. 2:19-cv-00638-ILG-PK**

**Judge I. Leo Glasser**  
**Magistrate Judge Peggy Kuo**

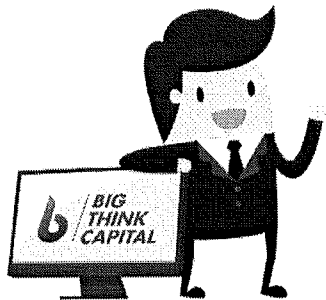
**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2019, I served a Notice of Motion of Defendant Big Think Capital Inc. to Vacate Certificate of Default, Memorandum of Law in Support of Motion of Defendant Big Think Capital Inc. to Vacate Certificate of Default, Declaration of David Brown with exhibits 1 and 2 annexed thereto and Declaration of Mendy Piekarski with exhibit 1 annexed thereto by email and first class mail enclosed in a security sealed postage-paid envelope addressed to the following at the last known address as follows:

Aytan Y. Bellin  
BELLIN & ASSOCIATES LLC  
50 Main Street  
Suite 1000  
White Plains, NY 10606  
[aytan.bellin@bellinlaw.com](mailto:aytan.bellin@bellinlaw.com)  
*Attorneys for Plaintiff*

  
\_\_\_\_\_  
Dwayne Lunde

# EXHIBIT 1

[Home](#)[About Us](#)[Our Team](#)[Business Loans](#) ▾[Resources](#) ▾[Apply Now](#)

## Big Think's Easy Online Application

To apply for any of our business loan products, start with the form below...

## Big Think's Easy Online Application

To apply for any of our business loan products, start with the form below...

## Congratulations!

Based on your info, you are eligible to receive funding offers. Please complete your contact information so one of our Funding Managers can assist you.

**Name \***

First

Last

**Company \***

**Phone \***

**Email \***

Big Think Capital uses advanced security to keep your information safe. By clicking "Get Started or Apply Now", you (i) consent to receiving calls and messages, including autodialed calls for marketing purposes, from Big Think Capital or its representatives or agents at the telephone number provided above (including mobile telephone number), and acknowledge that no purchase of credit or services is contingent upon such consent; and (ii) acknowledge that you have read Big Think Capital's Application Agreement and Big Think Capital's Privacy Policy and understand that you may opt out of

receiving communications of your choice from Big Think Capital as provided in the Privacy Policy.

☐ I'm not a robot

reCAPTCHA  
[Privacy](#) - [Terms](#)

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## STAY CONNECTED

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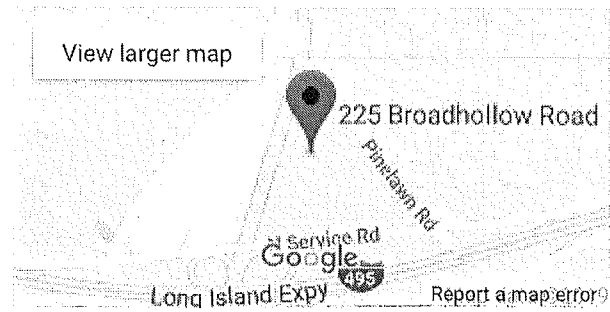
### CONTACT INFO

225 Broadhollow  
Road  
Melville, NY,  
11747  
Phone: 1 (646)  
400-0563

410 reviews



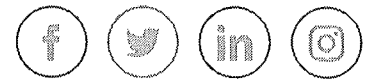
★ Trustpilot



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Disclaimer: The above information is provided as a guideline. Some loan conditions may fall outside of these parameters. We recommend that you speak with one of our advisors before taking any course of action based on this information.

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# EXHIBIT 2

**From:** Aytan Bellin  
**Sent:** Wednesday, March 6, 2019 2:54 PM  
**To:** David Brown <[david@bigthinkcapital.com](mailto:david@bigthinkcapital.com)>  
**Subject:** Re: per our call regarding Craig Cunningham

Mr. Brown

I consent to Big Think Capital getting an answer or a motion to dismiss to me by April 5, 2019.

Best,  
Aytan Y. Bellin

Sent from my iPhone

On Mar 6, 2019, at 1:59 PM, David Brown <[david@bigthinkcapital.com](mailto:david@bigthinkcapital.com)> wrote:

Mr. Bellin:

As we are in the process of securing Counsel, we would need 30 days to respond to this matter. Kindly confirm.

Best regards,

David

**David Brown**

President

c: 516-459-4266 | [david@bigthinkcapital.com](mailto:david@bigthinkcapital.com)

o: 646-490-3741 | 225 Broadhollow Road Melville, NY 11747

f: 646-400-0597

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